IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 404 OF 1997
IN
WRIT PETITION NO. 2142 OF 1987

Shri Bhojraj Narayandas Udasi of Bombay, Indian inhabitant, residing at Block No.1686, Room No.7, Section 25 Ulhasnagar - 421004. .. Appellant (Ori.Petitioner)

Versus

1. The Maharashtra Housing & Area Development Authority, Griha Nirman Bhavan, 4th floor, Bandra (East), Bombay - 400051.

2. Shri P.S.A. Sunderam, Administrator, Maharashtra Housing & Area Development Authority, Griha Nirman Bhavan, 4th floor, Bandra (E), Bombay - 400 051.

3. State of Maharashtra.

4. The President, Maharashtra Housing & Area Development Authority, Griha Nirman Bhavan, 4th floor, Bandra (E), Bombay - 400 051.

5. The Vice President & Chief Executive Officer, Maharashtra Housing & Area Development Authority, having his Office at Griha Nirman Bhavan, 4th floor, Bandra (E), Bombay - 400 051. .. Respondents

Mr. G.K. Masand with Mrs. Sawant for the appellant.

Mr. S.M. Dixit, AGP, for the respondents.

CORAM: R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED: 14TH FEBRUARY, 2006

ORAL JUDGMENT: [Per R.M. Lodha, J.]

. On 31st March 1987, Maharashtra Housing & Area Development Authority (MHADA) issued an order of compulsory retirement of the petitioner from service. The order dated 31st March 1987 reads thus:

> " Date : 26th June 1987
>
> Under Scheme 1978 section 3 for compulsory retirement of employees of the Maharashtra Housing and Area Development the Administrator is in the interests of the Department fully authorised by a notice of at least three months to release from service an employee belonging to class 1 and class 2 who
>
> 1) has been recruited to the former mandal as it employee before the completion of his 35th year of age then on his completion of his 50th year.
>
> 2) In any other case has completed his 55 year and where as Shri B.N. Udasi Assistant Property Manager holds Office under class 2 and was absorbed in the service before completing his 35th year and is now in the 51st year of his age And whereas the Administrator (Department is of the opinion that it would be in the interests of the Department to compulsorily retire Shri B.N. Udasi Assistant (Property Manager).
>
> . Hence now as per section 3 of the scheme for compulsory retirement of the employees of the Maharashtra Housing and Area Development 1978 Shri B.N. Udesi Asstt. Property Manager is given notice that he shall on 30th June 1987 or on the date three months next after the service of this notice

whichever date is later, be considered to have retired from service.

. If Shri B.N. Udasi has leave due to him and he applies for it and it is sanctioned and if such leave period extends beyond the period of the notice then he shall be taken to have retired on such date or on the date of his completion of 58 years of age which ever is earlier.

Sd/-
(PS.A. Sundaram)
Administrator"

2. The appellant challenged the said order by filing Writ Petition No. 2142 of 1987. The said Writ Petition came to be dismissed by the learned Single Judge by the order dated 31st August, 1996. Aggrieved thereby, the present Appeal has been preferred.

3. The appellant-Bhojraj Narayandas Udasi joined the Bombay Housing Board as Junior Clerk from the reserved quota of backward class of community on 22nd December, 1958. He was promoted as Senior Clerk on 18th August, 1962. After putting in service as Senior Clerk for more than eight years, on 26th November 1970, the appellant was promoted to the post of Senior Accounts Clerk. Within few months thereafter he was promoted as Divisional Head Clerk on 3rd March, 1971. Under the provisions of Maharashtra Housing & Area Development Act, 1976, Bombay Housing Board Act 1948 was repealed

and the appellant was absorbed by MHADA. In the year 1978, MHADA framed the compulsory retirement scheme. From the post of Senior Assistant, the appellant was promoted to the post of Assistant Manager on 30th May, 1980. As indicated above, by the order dated 31st March, 1987, the order of compulsory retirement was passed against the appellant.

4. The Scheme for compulsory retirement of the employees of MHADA at the age of 50/55 years provided for criterion for review thus:

> "There shall be a single uniform criterion for determining the suitability of an employee of all classes for continuance in service beyond the age of 50 OR 55 years as the case may be, viz. fitness for continuance in service. No employee should be held to be unfit for continuance in service, unless his record is <u>below average OR he is physically unfit OR his integrity is found to be doubtful on the basis of strong Prima-facie evidence."</u>

5. The Special Review Committee, as per the Scheme for compulsory retirement, examined the service record of the appellant and formed the opinion that the appellant must be discontinued from service.

6. It is true that in the year 1980, the

appellant was promoted to the post of Assistant, but thereafter the appellant was not found fit for promotion on various occasions. In the service record for the year 1983-84, against the column of fitness for promotion, it is recorded "Not at this stage".

7. For the period from 1st April 1984 to 6th November, 1984, the appellant was found to be an average Assistant Estate Manager and he used to remain absent abruptly thereby affecting office work.

8. For the period from 7th November 1984 to 31st May 1985, the assessment of the appellant has been recorded thus:

> "He is incapable to get the work done by subordinates. He never guides the subordinates nor tries to solve the problems of tenants. No efforts are made to effect recovery from tenants. Thus he is unfit to work as a Field Officer i.e. Assistant Estate Manager."

9. The service record of the appellant from 1st April 1985 to 31st March 1986 reveals that he was found to be man of casual approach; unable to guide properly the subordinates or the the tenants and he was found to be unfit for promotion.

10. It would thus be seen that the appellant has been found to be unfit for promotion on more than one occasion in the years immediately preceding his compulsory retirement. Legal position is well settled that an order of compulsory retirement is not a punishment; it implies no stigma nor any suggestion of misbehaviour. There is no allegation that the order of compulsory retirement was passed malafide. The said order cannot be said to be based on no evidence or arbitrary.

11. We find no error in the order of the learned Single Judge dismissing the Writ Petition and upholding the order of compulsory retirement.

12. Appeal has no merit and is dismissed with no order as to costs.

Sd/-
[R.M. LODHA, J.]

Sd/-
[ANOOP V. MOHTA, J.]

[srpasha@hc]